Remarks

This is in reply to the official action of October 28, 2009.

The withdrawn claims have been canceled. All claims are now restricted to claims containing the elected species or are claims generic thereto.

All original claims as amended now contain the unique special technical feature of:

"A combined cosmetic or therapeutic preparation having a carrier system comprising membrane-forming lipids and having a triple combination of active ingredients, wherein:

(a) at least one active ingredient is selected from anti-coagulants,

(b) at least one active ingredient is selected from vasoprotective agents, and

(c) at least one active ingredient is a vasodilatory microcirculation promoting substance selected from the group consisting of caffeine, nafidofuryl, pentoxyfyllin, buflomedil, and ginco active ingredients."

The special technical feature of the triple combination of active ingredients is clearly disclosed in the original specification, see e.g. page 6, lines 3 to 9 of the English translation of the PCT Application.

Further, added new claims 27 and 28, which might be objected to as being in original group II for being for being method claims now all contain the same technical feature in common with the other claims, i.e. :

"A combined cosmetic or therapeutic preparation having a carrier system comprising membrane-forming lipids and having a triple combination of active ingredients, wherein:

(a) at least one active ingredient is selected from anti-coagulants,

(b) at least one active ingredient is selected from vasoprotective agents, and

(c) at least one active ingredient is a vasodilatory microcirculation promoting substance selected from the group consisting of caffeine, nafidofuryl, pentoxyfyllin, buflomedil, and ginco active ingredients."

The prior art does not disclose or suggest this special technical feature as subsequently discussed.

It is further specifically admitted on the record that new claim 27 is obvious over claim 1 and vice versa. This not an admission that the claims are unpatentable over the same prior art.

The restriction requirement thus must be withdrawn. The Examiner is referred to MPEP 803.01 II. Guidelines, paragraph 2:

"If there is an express admission that the claimed invention *> would have been < obvious over each other within the meaning of 35 U.S.C. 103, restriction should not be required. *In re Lee* 199 USPQ 108 (Comm'r Pat. 1978)."

In addition, the Examiner is referred to MPEP 1850 I.

"....In applying PCT Rule 13.2 to international applications as an International Searching Authority, an International Preliminary Examining Authority and to national stage applications under 35 U.S.C. 371, examiners should consider for unity of invention all the claims to different categories of invention in the application and permit retention in the same application for searching and/or preliminary examination, claims to the categories which meet the requirements of PCT Rule 13.2....

The categories of invention in former PCT Rule 13.2 have been replaced with a statement describing the method for determining whether the requirement of unity of invention is satisfied. Unity of invention exists only when there is a technical relationship among the claimed inventions involving one or more special technical features. The term "special technical features" is defined as meaning those technical features that define a contribution which each of the inventions considered as a whole, makes over the prior art. The determination is made based on the contents of the claims as interpreted in light of the description and drawings. Chapter 10 of the International Search and Preliminary Examination Guidelines also contains examples concerning unity of invention...."

The Examiner is also referred to MPEP 1850 II:

" ....From the preceding paragraphs it is clear that the decision with respect to unity of invention rests with the International Searching Authority or the International Preliminary Examining Authority. However, the International Searching Authority or the International Preliminary Examining Authority should not raise objection of lack of unity of invention merely because the inventions claimed are classified in separate classification groups or merely for the purpose of restricting the international search to certain classification groups.... If the independent claims avoid the prior art and satisfy the requirement of unity of invention, no problem of lack of unity arises in respect of any claims that depend on the independent claims. In particular, it does not matter if a dependent claim itself contains a further invention...."

Election of species is a U.S. practice and has no place in PCT practice as applied to the present application where, as here, there is no reasonable basis for application of prior art to generic claims.

The references cited by the Examiner merely individually address different possible components of the presently claimed cosmetic composition and none of the cited patents even mention "anticoagulant" for any purpose and certainly do not disclose or suggest "anticoagulant" in such a composition, which is at the heart of the invention. The present claims are clearly united by a special technical feature and have "unity of invention" under PCT Rules and further, even if the restriction were to be maintained, the claims would have to be rejoined upon allowance of a generic claim.

Claims 1, 2, 6, 7, 11-14, 18, 21 and 22 have been rejected under 35 U.S.C. 102(b) as being anticipated by Cho et al. (US 5,667,793).

This rejection is clearly improper and should be withdrawn. All claims require the presence of an anticoagulant in the composition. Cho et al. does not disclose or suggest anything concerning an anticoagulant for any purpose. There is thus clearly no anticipation under 35 U.S.C. 102.

Claims 1, 2, 6-8, 11-14, 16-18 and 21-23 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Cho et al. in view of Bombardelli et al. (US 5,679,358).

This rejection is improper and should be withdrawn.

Neither of Cho et al. or Bombardelli et al. disclose or suggest anything concerning an anticoagulant for any purpose. The combination of these references is thus clearly likewise deficient.

The triple combination of anti-coagulants, vasoprotective agents and vasodilatory microcirculation-promoting substances surprisingly represents an optimum combination of active ingredients for cosmetic or prophylactic or therapeutic treatment of complexes of symptoms which involve the formation of oedemas or haematomas in the skin. None of the cited references or any combination of them make any such disclosure or suggestion

Cho et al. is directed to topical formulations for the treatment of cellulitis. Accordingly, Cho *et al.* is directed to the solution of a different problem than the present invention, which is directed to the treatment of haematoma. Cho *et al.* address that different problem by improving peripheral microcirculation by means of a combination of vasoprotective agents (e.g. aescin) and vasodilatory microcirculation-promoting agents (e.g. caffeine). However, the preparations do not comprise any anti-coagulant providing the dissolution of a blood clot or a haematoma.

Accordingly, the preparations according to Cho *et al.* are completely unsuitable for the treatment of haematoma.

Bombardelli *et al.* is directed to topical formulations for the treatment of cellulitis. Accordingly, Bombardelli is directed to the solution of a different problem than the present invention, which is directed to the treatment of haematoma. Bombardelli *et al.* address that different problem by improving peripheral microcirculation by means of a combination of a vasoprotective agent (e.g. esculoside) and vasodilatory microcirculation-promoting agents (e.g. caffeine). However, the preparations do not comprise any anti-coagulant.

The esculoside coumarin derivative according to Bombardelli *et al.* is clearly not an "anti-coagulant" as is evidenced by the enclosed documents. The Wikipedia entry to the topic "anti-coagulant" mentions coumarins having an anti-coagulant effect provided that their three-dimensional spatial structure allows for being effective as a vitamin K antagonist. However, the esculoside mentioned in Bombardelli *et al.* has a completely different three-dimensional structure than the medically used vitamin K antagonistic coumarins. Besides, nowhere in literature there are any indications that esculoside might have any anti-coagulant effect.

Thus, the preparations according to Bombardelli *et al.* do not comprise any anti-coagulant providing the dissolution of a blood clot or a haematoma. Accordingly, the preparations according to Bombardelli *et al.* are completely unsuitable for the treatment of haematoma.

In the relevant field there obviously existed a prejudice with regard to the particular combination of anti-coagulants and vasodilatory microcirculation-promoting agents. The reason for this prejudice might be that e.g. in the treatment of dark circles around the eyes and/or in the treatment of haematoma the skilled person first of all tends to try to reduce the blood circulation in the area to be treated in order to avoid an enhancement of the unwanted symptoms such as blood infiltrating into the interstitium resulting in a darkening of the affected area. The present invention overcomes the prejudice that increasing the blood circulation by vasodilation in the affected area would be detrimental when trying to reduce the symptoms of haematoma. Despite this prejudice the present inventors found that combining an anti-coagulant and a vasodilatory microcirculation-promoting agent is beneficial in the treatment of haematoma when used in combination with a vasoprotective agent.

The afore mentioned advantages of the present invention are illustrated in figure 1 showing the elucidative effect of the inventive combined preparation when used in the treatment of dark areas of the lower eye lid. From figure 1 it can be identified that after a treatment period of 14 days a significant elucidative effect can be observed. This elucidative effect is considerably stronger when compared to prior art preparations.

Since the claimed subject matter of the present invention provides a significant beneficial effect, which could only be achieved by overcoming a prejudice in the prior art the present invention is clearly based on an inventive step that is unobvious to one skilled in art under 35 U.S.C. 103.

All rejections should be withdrawn and all claims should be allowed, which action is courteously requested.

Respectfully submitted,

/Michael L. Dunn/

Michael L. Dunn
Registration No. 25330
CUSTOMER NO. 49003
Simpson & Simpson, PLLC
5555 Main Street
Williamsville, NY 14221-5406
Telephone No. 716-626-1564

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MLD/MJK